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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,510	01/18/2001	Moot Choo Chuah	CHUAH 54	6393
46363	7590	10/01/2009		
WALL & TONG, LLP/ ALCATEL-LUCENT USA INC. 595 SHREWSBURY AVENUE SHREWSBURY, NJ 07702			EXAMINER NGUYEN, HANH N	
			ART UNIT 2416	PAPER NUMBER
			MAIL DATE 10/01/2009	DELIVERY MODE PAPER

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MOOI CHOO CHUAH

Appeal 2009-000156
Application 09/764,510
Technology Center 2400

Decided: September 30, 2009

Before KENNETH W. HAIRSTON, MAHSHID D. SAADAT
and ROBERT E. NAPPI, *Administrative Patent Judges*.
HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. §§ 6(b) and 134 from the final rejection of claims 1 to 3, 5 to 9 and 14 to 17. We will reverse.

The disclosed invention relates to the issuance of a request for preferred ones of traffic classes (e.g., streaming and interactive) in a priority order during negotiations for variable quality of service between a

transmitting station and a receiving station (Figs. 4, 5; Spec. 2, 5 to 7; Abstract).

Claim 1 is representative of the claims on appeal, and it reads as follows:

1. A method for use by a mobile station, the method comprising the step of:

negotiating a variable quality of service between a mobile station and a wireless data network, when said mobile station is connected to said wireless data network; and

wherein during said negotiation said mobile station issues a request for preferred ones of traffic classes in a priority order, wherein the request includes a quality of service information element having at least one traffic class field for conveying the request for preferred ones of traffic classes in said priority order;

wherein, when resources are unavailable for granting a first traffic class preference, said network successively checks, according to said priority order, if enough resources are available for at least one other traffic class preference without requiring additional mobile station transmissions.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Kannas	US 6,683,853 B1	Jan. 27, 2004 (filed Dec. 1, 1999)
Rinne	US 6,845,100 B1	Jan. 18, 2005 (filed Aug. 28, 2000)

The Examiner rejected claims 1 to 3, 5 to 9, and 14 to 17 under 35 U.S.C. § 103(a) based upon the teachings of Kannas and Rinne.

Kannas describes a system that dynamically changes a requested quality of service (QoS) if the requested quality of service is not available (Figs. 1, 2; Abstract; col. 2, ll. 8 to 42; col. 5, ll. 6 to 63).

The Examiner acknowledges (Final Rej. 3) that “Kannas et al. does not disclose the request includes a QOS information element having at least one traffic class field for conveying the request for preferred ones of traffic classes in priority order.” According to the Examiner (Final Rej. 3), Rinne describes “a priority table comprising traffic class fields corresponding with different class of services.” The Examiner contends (Final Rej. 3) that it would have been obvious to one of ordinary skill in the art to incorporate the teachings of Rinne into the teachings of Kannas to “help network controller to dynamically allocate different traffic classes without requiring a mobile to retransmit a request when the network bandwidth is not available.”

Appellant argues *inter alia* (App. Br. 15) that “[a] traffic class-protocol field value included within a received packet and used by a QoS classifier for classifying the received packet into a QoS class and QoS sub-class for QoS-based transmission over a radio network, as taught in Rinne, is not a traffic class field for conveying a request . . . for preferred ones of traffic classes in a priority order” as set forth in the claims on appeal.

Although Rinne describes a QoS scheduler that comprises means for determining from a priority table priorities of packets stored according to differing classes, and means for allocating the capacity of transmission lines based on the priorities (col. 3, ll. 54 to 60), Rinne is silent as to a request being made for preferred ones of traffic classes in a priority order as required by all of the claims on appeal. In summary, the request for a quality of

service (QoS) in Rinne (col. 3, l. 61 to col. 4, l. 13) is not a request for preferred ones of traffic classes in a priority order.

Thus, we agree with the Appellant's argument that the skilled artisan would not have combined the teachings of the applied references to arrive at the claimed invention. It follows that the obviousness rejection of claims 1 to 3, 5 to 9, and 14 to 17 is reversed because the Examiner's articulated reasons for combining the teachings of the references to Kannas and Rinne do not support a legal conclusion of obviousness. *KSR Int'l v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007).

The decision of the Examiner is reversed.

REVERSED

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